

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 8187 of 2006(Y)

OS.405/2005 of I ADDL.M.C., THRISSUR

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PETITIONER:

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NETHAJI SPORTS CLUB, C/O.AVON AUTOMATIVE  
COMPANY, SIMIS COMPLEX, KURUPPAM ROAD, TRICHUR-04,  
REP. BY SECRETARY, SUNYB KURIAN, AGED 46,S/O.KURIAN  
THEKKANATH CHERUKARA, UNITY ROAD, KURIACHIRA DESOM  
CHIYYARAM VILLAGE, THRISSUR TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS:

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1. THE THRISSUR DISTRICT FOOD BALL  
ASSOCIATION, REP. BY ITS SECRETARY DAVIS MOOKAN,  
MUNICIPAL STADIUM, THRISSUR.
2. THE KERALA FOOD BALL ASSOCIATION,  
REP. BY ITS SECRETARY, K.P. SUNNY, MATHER SQUARE,  
6TH FLOOR, OPPOSITE TOWN RAILWAY STATION,  
ERNAKULAM, KOCHI-682 018.

BY ADV. SRI.A.K.SESHADRI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE PLAINT IN O.S.NO.405/05 BEFORE THE MUNSIFF COURT, THRISSUR DTD.1.2.05.
- EXT.P2: COPY OF THE OBJECTIONS FILED BY THE FIRST DEFENDANT IN I.A.NO.127/05 IN O.S.NO.405/05 DTD.15.2.05.
- EXT.P3: COPY OF THE JUDGMENT IN C.M.APPEAL NO.65/05 DTD. 30.7.05 ON THE FILE OF THE DISTRICT COURT, THRISSUR.
- EXT.P4: COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S.NO.405/05 ON THE FILE OF THE MUNSIFF COURT, DTD. 11.8.05.
- EXT.P5: COPY OF THE RELEVANT PAGE OF THE RULES AND REGULATIONS OF THE SECOND DEFENDANT, PAGE NUMBERS 36 AND 37.
- EXT.P6: COPY OF I.A.NO.6690/05 IN O.S.NO.405/05 BEFORE THE MUNSIFF COURT, THRISSUR DTD. 25.7.05.
- EXT.P7: COPY OF THE OBJECTIONS FILED BY THE PLAINTIFF AGAINST EXT.P6 APPLICATION DTD.22.8.05.
- EXT.P8: COPY OF THE ORDER PASSED IN I.A.NO.6690/05 IN O.S.NO.405/05 DTD.6.2.06.

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// TRUE COPY//

**PIUS C. KURIAKOSE, J.**

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W.P.(C) No.8187 of 2006  
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Dated: 20<sup>th</sup> July, 2007

**JUDGMENT**

Impugned in this Writ Petition under Article 227 of the Constitution is Ext.P8 order by which the court below has referred the parties to arbitration and dismissed the suit accordingly. The court below found that there is an arbitration clause in the rules and regulations of the 1<sup>st</sup> respondent-Association which are binding on the parties. According to the court below, in view of existence of the arbitration clause the suit is not maintainable. The contention of the petitioner-plaintiff that the respondents did not invoke Section 8 of the Arbitration and Conciliation Act was ignored by the court below in view of certain observations in Ext.P3 judgment of the learned District Judge in C.M.Appeal No.65/05 which the petitioner had filed against an interim order passed in the suit. True there are certain observations in the judgment of the learned District Judge which may suggest that application, if any, filed under Section 8(1) is to be allowed in view of the existence of the arbitration clause. But on a careful reading of Ext.P3 it will be seen that what the learned District Judge has done in Ext.P3 is to afford opportunity to the parties move in compliance of Section 8(1). The question whether there is proper

compliance of Section 8(1) was not in fact decided by the District Judge.

2. Section 8(1) of the Arbitration and Conciliation Act, 1996 reads as follows:

"A judicial authority before which an action is brought in a matter with is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration."

So the question whether application has been submitted by the applicant before the 1<sup>st</sup> statement touching on the substance of the dispute has been given, is of importance. The learned Munsiff perhaps thought that since the counter affidavit filed in the I.A. was also before the learned District Judge, while passing Ext.P3 the learned District Judge construed that affidavit as a statement not touching the substance and proceeded as though such a statement was yet to be filed.

3. Mr.A.K.Seshadri, learned counsel for the respondents submits that either way the suit has become infructuous and no useful purpose will be served from anybody's point of view by

continuing the suit or by referring the parties to arbitration. The above submission is strongly resisted by Mr.Sreekumar(Chelur), counsel for the petitioner.

4. According to me, it is not necessary for this court to decide whether the suit has become infructuous. In this case the concern is as to whether Ext.P8 order is liable to be interfered with, within the contours of the supervisory jurisdiction of this court under Article 227 of the Constitution. Having gone through Ext.P3 judgment of the learned District Judge, the statutory provision (Section 8(1) of the Arbitration and Conciliation Act) and the various judicial precedents governing the point including the judgment of the Supreme Court in **P.Anand Gajapathi Raju v. P.V.G.Raju** (AIR 2000 S.C. 1886) and also a judgment of the Punjab and Haryana High Court which was cited at the Bar by Mr.Sreekumar in **Sundershan Chopra v. Company Law Board** [2003(3) Arb. LR 14 (P&H)], I feel that the question whether the present application under Section 8(1) has been filed by the respondents before the respondents filed their first statement touching on the substance of the dispute involved is to be considered afresh by the learned Munsiff notwithstanding Ext.P3

judgment.

5. I set aside the impugned order and direct the learned Munsiff to take a fresh decision on Ext.P6 I.A. after hearing both sides. The learned Munsiff will enter clear findings as to which is the first statement filed by the respondent touching the substance of the dispute while taking fresh decision as directed above. It is made clear that I have not expressed any opinion either on the merits of the above issue or as to whether the suit has become infructuous.

The Writ Petition is disposed of as above. No costs.

srd

**PIUS C.KURIAKOSE, JUDGE**